
OLR Bill Analysis

sSB 357

AN ACT CONCERNING VARIOUS STATUTES PERTAINING TO THE DEPARTMENT OF REVENUE SERVICES.

SUMMARY:

This bill makes anyone who has or allows someone to use a “cigarette rolling machine” to make cigarettes at his or her retail or commercial premises a tobacco product manufacturer, subject to existing laws and restrictions governing such manufacturers who sell cigarettes in Connecticut.

By making such businesses tobacco product manufacturers, the bill requires them to certify annually to the Department of Revenue Services (DRS) commissioner that they are either (1) entering into, and performing financial obligations under, the 1998 master tobacco settlement agreement or (2) paying into a qualified escrow account a specified inflation-adjusted amount for each “unit” (cigarette or 0.09 ounces of roll-your-own tobacco) they sell in the state. For sales in 2011, the escrow payment is 2.82 cents per unit. It also extends to any such business the existing ban on, and penalties for, selling, either directly or through distributors or dealers, cigarettes made by manufacturers not listed in the DRS directory of manufacturers and their cigarette brands that comply with the law.

In addition, the bill expressly (1) requires those who meet its conditions regarding cigarette rolling machines to get and maintain a cigarette manufacturer’s license and (2) if they fail to do so, allows DRS, after a hearing, to suspend or revoke their cigarette dealer or cigarette or tobacco product distributor license and sales tax seller’s permit.

The bill also:

1. allows the DRS commissioner to disclose certain tax information

in connection with personnel proceedings involving a current or former DRS employee (§§ 1 & 2);

2. increases, from more than \$500 to more than \$1,000, the threshold for tax or lottery sales agent penalty waivers requiring Penalty Review Committee review and approval (§ 3);
3. requires captive insurance companies to pay premium taxes on assumed reinsurance premiums by March 1st annually, rather than in March, thus making the deadline the same as the existing deadline for captives to pay premium taxes on direct-written premiums (§ 5); and
4. makes a technical change (§ 6).

EFFECTIVE DATE: Upon passage for the cigarette rolling machine provision and the remainder of the bill is effective July 1, 2012. The technical change applies to calendar years starting on or after January 1, 2012.

§ 4 — CIGARETTE ROLLING MACHINES AND TOBACCO PRODUCT MANUFACTURERS

Cigarette Rolling Machines

The bill defines a cigarette rolling machine as one that allows someone to process tobacco or anything made or derived from tobacco into a roll or tube. To be covered, the machine must be located, and the rolling process must take place, at a retail establishment or on commercial premises.

Expanded Definition of Tobacco Product Manufacturer

The bill expands the definition of a tobacco product manufacturer to cover anyone who owns, leases, possesses, controls, operates, or otherwise uses a cigarette rolling machine at his or her commercial or retail premises, or permits someone else to operate or use the machine at those premises.

Under current law, with some exceptions, a tobacco product manufacturer is any entity or its successor that, after July 1, 2000,

directly and not exclusively through an affiliate (1) manufactures cigarettes intended for sale in the United States, including sale through an importer or (2) is the first purchaser anywhere of cigarettes for resale in the United States from a manufacturer that did not intend them for sale in the United States.

Tobacco Product Manufacturer Escrow Requirements

The bill applies the current law's tobacco product manufacturer payment requirements to businesses meeting the bill's cigarette rolling machine conditions.

By law, tobacco product manufacturers whose cigarettes are directly or indirectly sold in Connecticut must certify, under penalty of false statement, to the DRS commissioner and the attorney general by April 30 every year that, as of the certification date, they are either participating in the master settlement agreement or complying with escrow payment requirements for nonparticipating manufacturers. DRS must publish a directory of manufacturers and their cigarette brands that comply with the payment requirements.

Penalties for Violating Escrow Requirements

If businesses that meet the bill's cigarette rolling machine conditions do not comply with the escrow payment requirements for tobacco product manufacturers, the bill subjects them to existing penalties.

By law, manufacturers that violate the escrow payment requirements face a possible civil penalty of up to 5% of the improperly withheld escrow amount for each day of violation up to 100% of that amount. For a knowing violation, the penalty may be up to 15% of the improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required annual deposit is a separate violation.

In addition, it is both a class A misdemeanor and an unfair and deceptive trade practice to sell, offer to sell, distribute, or possess for

sale cigarettes in Connecticut that are not listed in the DRS directory. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both. Unlisted cigarettes sold or offered for sale are considered contraband and are subject to confiscation, search, and forfeiture. Seized contraband cigarettes must be destroyed. The attorney general, on the DRS commissioner's behalf, may ask for an injunction against actual or threatened violations of the sale prohibitions.

Finally, when it prevails in any action against a tobacco product manufacturer to enforce the payment law, the state is entitled to recover its costs for investigation, bringing the action, and expert witness and reasonable attorneys' fees. A violator must pay to the state any profits, gains, gross receipts, or other benefits it received from the violation. Unless expressly provided otherwise, these remedies and penalties are cumulative, both with each other and with those available under other state laws.

Cigarette Manufacturer's License Required

The law already requires anyone whose business includes selling cigarettes or tobacco products in Connecticut to have either a cigarette dealer's or cigarette or tobacco product distributor's license from DRS. In order to be listed and have its brands listed in the DRS directory, a tobacco product manufacturer whose cigarettes are sold to consumers in Connecticut must also have a cigarette manufacturer's license. Finally, a person who sells cigarettes or tobacco products at retail must have a sales tax seller's permit, since cigarette and tobacco product sales are subject to both the sales and either the cigarette or tobacco products taxes.

The bill requires anyone who meets the conditions concerning cigarette rolling machines to also obtain and maintain a cigarette manufacturer's license in addition to other required licenses. The manufacturer's license fee is \$5,250 and the license is renewable annually for the same fee. The bill makes such a person's failure to get and maintain a manufacturer's license grounds for DRS, after a hearing, to suspend or revoke the person's dealer or distributor license

and sales tax seller's permit.

§§ 1 & 2 — DISCLOSURE OF CERTAIN TAX INFORMATION IN PERSONNEL PROCEEDINGS

The bill allows the DRS commissioner to disclose tax returns and return information (see BACKGROUND) in connection with personnel proceedings, including any related administrative or judicial proceedings, involving a current or former DRS employee if the commissioner determines that the information is relevant and material to the proceeding. The commissioner may prescribe terms and conditions for the disclosures, which can be used only for purposes of, and to the extent necessary in, the proceedings.

The bill prohibits anyone involved in the proceeding from further disclosing the information and subjects violators to a fine of up to \$1,000, up to one year in prison, or both. The same penalty already applies under existing law for other unauthorized disclosures of tax information.

§ 3 — TAX PENALTY WAIVERS

By law, the Penalty Review Committee must review and approve (1) tax penalty waivers issued by the DRS commissioner and (2) lottery sales agent penalty waivers issued by the Department of Consumer Protection (DCP) commissioner, if they exceed a minimum threshold. The bill increases this minimum from \$500 to \$1,000.

The Penalty Review Committee consists of the comptroller, DRS commissioner, and the Office of Policy and Management secretary or their designees, who must be employees of their respective agencies. The committee (1) must meet as often as needed, but at least monthly, and make an itemized statement of all approved waivers available for public inspection and (2) may approve a waiver only by majority vote.

BACKGROUND

Related Court Case

In a recent Superior Court case, the court ruled that merely owning and renting cigarette rolling machines was not enough to make a

business a tobacco product manufacturer subject to a temporary injunction against selling cigarettes not listed in the DRS directory. Rather, to meet the current definition, a business's employees must directly participate in operating the machines "to make finished cigarettes for sale or for the benefit of customers" (*State of Connecticut v. Tracey's Smoke Shop and Tobacco, LLC.*, 2012 WL 953408, Feb. 24, 2012, Bright, J., unpublished).

Cigarette and Tobacco Products Taxes

The cigarette tax is 17 cents per cigarette or \$3.40 for a pack of 20. The tobacco products tax (applicable to cigars, snuff, pipe and other types of loose tobacco, and similar products) is (1) 50% of the wholesale price, capped at 50 cents each for cigars and (2) \$1 per ounce for snuff tobacco.

Tax Returns and Return Information

By law, a "return" is any of the following filed with the DRS commissioner by, on behalf of, or with respect to, any person: (1) a tax or information return; (2) an estimated tax declaration; (3) a refund claim; or (4) any license, permit, registration, or other application. The term also covers amendments or supplements, including supporting schedules, attachments, or lists that supplement or are part of a filed return.

"Return information" is:

1. a taxpayer's identity;
2. the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected or withheld, under- or over-reporting, or tax payments;
3. whether the return is being, was, or will be examined or investigated; or
4. any other data received, recorded, prepared, or collected by or furnished to the DRS commissioner regarding a return or

regarding any determination of liability for a tax, penalty, interest, fine, forfeiture, or other imposition or offense (CGS § 12-15 (h)(1) & (2)).

Lottery Sale Agent Penalties

Lottery sales agents have a fiduciary duty to remit proceeds from lottery ticket sales to the Connecticut Lottery Corporation (CLC) on a timely basis as required by CLC regulations. If an agent is delinquent in doing so, the CLC president must notify the DCP commissioner. The DCP commissioner must assess the agent for the delinquency (1) at the rate of 10% of the amount due or \$10, whichever is greater, plus (2) 1.5% interest for each month or part of a month the payment is late. The commissioner can waive the penalty, subject to the Penalty Review Committee's authority, if he determines it was unintentional and not due to neglect (CGS § 12-569(a)).

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 33 Nay 17 (04/03/2012)